IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1493 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRAKUMAR FULCHAND PRADHAN

Versus

DINMAHMAD DIDARALI SHAIKH

Appearance:
MR Shailesh Parikh for Mr HB SHAH for the appellant
NOTICE SERVED for Respondent No. 1
MR YN RAVANI for Respondent No. 3

CORAM : MR.JUSTICE H.R.SHELAT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 06/04/2000

ORAL JUDGEMENT

Per, H.R. Shelat, J.

The appellant who preferred Motor Accident Claim Petition No.376 of 1982 for compensation because of the injuries he sustained in motor accident partly succeeded. He has therefore filed this appeal for getting the amount of compensation disallowed by the Motor Accident Claims Tribunal, Ahmedabad (Rural) at Narol.

2 On 20.12.1981 the appellant was going from Himatnagar to Ahmedabad, driving his scooter. When he reached near village Chhala at 8.30 PM, a jeep car belonging to respondent no.2 and driven by respondent no.1 was because of the mechanical defect, parked on the road. As alleged by the appellant, there was neither light nor reflector on the back side of the jeep to know about its presence on the road. At that time, one S.T. Bus with dazzling light was approaching from the opposite direction. The appellant therefore could not see in front of him and could not realise about the presence of the jeep on the road, as a result, he rammed into the jeep from behind and sustained serious injuries. He was thrown off the scooter on the road. Baldevbhai was the pillion rider. He did not, luckily, sustain any injury. He therefore took the appellant to the Civil Hospital at Gandhinagar for treatment. Later on, the appellant was shifted to Civil Hospital at Ahmedabad where he was hospitalised for about 2 months and 17 days. The appellant could see that the incident happened because of the sole negligence on the part of the jeep driver as he did not take care in parking the jeep. He, therefore, filed MAC Petition No.376 of 1982 in MAC Tribunal (Aux.) Ahmedabad (Rural) at Narol for the compensation of Rs.2,16,975/= from the respondents who are the driver, owner and insurer of the jeep respectively. The learned Chairman of the Tribunal considering the evidence on record reached the conclusion that the incident happened not because of the sole negligence on the part of the jeep driver - respondent no.1 but also because of the negligence on the part of the appellant in driving his scooter. Considering the facts on record, he apportioned the negligence 75:25 i.e. 75% on the part of the appellant and 25% on the part of the jeep driver. He also found that under the head of medical treatment charges the appellant was entitled to Rs.1900/-, under the head of pain, shock and suffering the appellant was entitled to Rs.15,000/=, and under the head of economic loss the appellant was entitled to Rs.25,500/=. In all, he was entitled to Rs.42,400/-. He then passed the award for Rs.10,600/= because of the above said apportionment of negligence and also awarded interest thereon at the rate of 6% per annum directing further that if the amounts were not paid within 3 months, the interest would

be calculated at the rate of 12% per annum. He also awarded costs in proportion. Being aggrieved by such judgement and order dated 8.3.1984, the appellant (original applicant) has preferred this appeal.

3 The appellant has come forward with a case that the Tribunal erred in apportioning the negligence. The incident happened because of the sole negligence on the part of the jeep driver. The jeep driver parked the jeep on the road and therefore the whole of the asphalt road was not kept unobstructed. Further, the lights on the back side were not kept on and there was no reflector. The jeep driver therefore took no care in showing about the presence of the jeep on the road and during night time because of the vehicles passing on the road with dazzling lights it was, in the absence of any light or reflector on the back, difficult to discern about the presence of the jeep on the road. The Tribunal therefore ought not to have held him guilty to the extent of 75% or even to any extent. It is also the case of the appellant that the Tribunal erroneously fixed his income to be of Rs.750/= per month. He was the partner in the firm. In all there were four partners : his brother, his wife, wife of his brother and himself. The female partners were virtually the sleeping partners and his brother was not conversant with the business of the firm. He was therefore only the working partner in the firm and the firm was earning because of his exertion. Hence, whatever was the total earning of the firm, ought to have been accepted to be his income, and on the basis of the said income the compensation under different heads ought to have been assessed. Under the head pain, shock and suffering more than Rs.15,000/= ought to have been awarded and likewise under the heads of medical treatment charges and permanent partial disability.

4 We would now first take up the issue about the negligence. The appellant has deposed at exh.21 and Baldevbhai Shivabhai, the pillion rider, has deposed at exh.13. Gopalbhai Virsangbhai is having the field adjacent to the road where the incident happened. Hearing the bursting noice he went to the scene of the incident and found that the jeep was on the road, the scooter driver was lying on the road in wounded condition. For necessary corroboration he is therefore examined at exh.34. Respondent no.2 who is the owner of the jeep car was also travelling by the said jeep. He has deposed at exh.35. It may be stated that he has admitted the presence of Gopalbhai Virsangbhai at the time of the accident and has also admitted that Gopalbhai Virsangbhai witnessed the incident. When the evidence of

these four witnesses is considered, the picture about the happening of the incident becomes clear or is made clear. What appears from such evidence is that the back right wheel of the jeep was punctured on the road and therefore the same was required to be replaced. The jeep was therefore kept on the road and with the aid of jack the wheel was replaced. When the jack was being removed, the appellant happened to pass at that time driving the scooter and he rammed into the jeep from the back, as a result he sustained injuries. Whether the jeep was in the middle of the road or was on the side of the road is the point in controversy. But even if it is assumed that the jeep was kept aside of the road, the jeep driver cannot be exonerated. Whenever a driver of the vehicle has to park the vehicle, he must park the vehicle in such a way so that the whole of the asphalt road remains open for other users of the road. He cannot cover any portion of the asphalt road while parking the vehicle. If he does not park accordingly and does not keep the whole of the asphalt road open, or leaves the whole or some of the asphalt road obstructed or covered, it would be his negligence because that may give rise to other acccidents because the other passersby may not have a convenient, clear and safe passage. At this stage, we may refer the decision of this Court rendered in the case of PREMLATA NILAMCHAND SHARMA V. HIRABHAI RANCHHODBHAI reported as 1983 ACJ 290 = AIR 1982 Guj. 243 = 1982 (2) GLH 582 wherein what happened was that the trailer attached to a tractor was found stationary on the highway because of dark foggy night. The tractor and trailer were parked on the side of the road, but in such a manner that the left wheels of the vehicle were on the kutcha strip while the right wheels were on the asphalt road. At that time the scooterist came from behind and collided with the trailer from the back and died. It was then held that the driver of the tractor and the trailer ought to have taken care in parking the vehicle entirely off the asphalt road so as to avoid any possibility of accident and ought to have taken care to see that whole of the asphalt road was left open and unobstructed. As he did not do so, in that case, the driver of the tractor and trailer was held solely responsible for the accident, reversing the finding of the Tribunal which had apportioned the liability of 75% on the tractor driver and 25% liability on the scooter driver. In view of such decision and facts stated hereinabove that the jeep driver parking the jeep obstructed asphalt road is certainly negligent. Whether in this case the respondent no.1 jeep driver can be held solely responsible or he may be held responsible to some extent is the point that now arises for consideration because of the submissions made before us.

For determining the issue raised, it is necessary to know how the appellant was driving the scooter.

5. From the evidence of the aforesaid witnesses it appears that the appellant must be driving the scooter at the hectic speed and not at the speed of 40 km, as stated by Baldevbhai. The Tribunal has also held that the scooter must be going at a speed of 40 km keeping in mind the evidence of Baldevbhai but, in our view, the appellant must be driving the scooter at hectic speed because it appears from the evidence of Baldevbhai Shivabhai that seeing the jeep being under repair from a distance of 40 ft. the brakes were applied, still however, the incident happened. However, remaining at a distance of 40 ft. the brakes are applied and the scooter is driven at the speed of 40 km, keeping in mind the braking distance, the scooter could have been stopped at a distance of at least 25 ft. But, as the same could not be stopped within 25 ft. distance, it can reasonably inferred that the sooter was being driven at the excessive speed and not at the speed as canvassed. Not to drive the vehicle at the excessive speed is also the duty of the driver because while driving the vehicle at the excessive speed it would be difficult for the driver to control the situation and avert the exigencies that may arise suddenly on the road. The appellant in this case has stated that he drove the scooter at the hectic speed, as a result he was not in a position to control the vehicle. Further, it also appears from the evidence that when the appellant reached near the place of the incident one ST bus with dazzling lights was coming from the opposite direction. It was therefore difficult to see in his front. If the driver is put to such a risky situation, better would be on his part to slow down the vehicle applying the brakes, to move on his left side and if required to stop and not to proceed ahead till the vehicle coming from the opposite direction has passed by. In this case, though it was risky because of the dazzling light of the ST bus, the appellant continued to drive the vehicle without applying the brakes, as a result, the incident happened. He has thus committed his another breach of duty and has thereby contributed to the negligence. In this case, therefore, the incident has happened not because of the sole negligence either of the appellant or the respondent no.1 - jeep driver but becauseof the breach of duty on the part of both.

6 What can be the aportionment qua the negligence is the next question that arises for examination. It is not necessary to repeat the evidence and facts discussed herein above. Suffice it to say that because of the

above stated facts, the negligence of the jeep driver can be assessed at 40% and the appellant at 60%.

7 We will now switch over to the next issue about quantum of compensation. Under the aforesaid three heads as stated herein above, the compensation is assessed. So far as the compensation under the medical treatment charges and under the head "pain, shock and suffering" is concerned, we see no justifiable reason to upset the same. We will now therefore consider the other heads inclusive of those ignored by the Tribunal. It may be stated that even if the compensation under particular head is not prayed for but the evidence thereof is available on the record, it would be open to the Tribunal to award the compensation under that head but it must be borne in mind that the total amount of compensation must not exceed the amounts prayed for in the relief clause.

8 The evidence reveals that for two months and eight days the appellant was hospitalised and thereafter for few months at home he had to take rest. Someone must have attended him in the hospital and for some days at home for which he must have spent. Of course, evidence in that regard is too scanty but on the basis of the reasonable guess work the amount can well be assessed considering the then prevailing market rates. In those days, for getting the tiffin twice in a day and for snacks and tea one was required to spend at least Rs.25/= per day. Considering the period of hospitalisation therefore the charges under the head of nursing and care can be assessed at Rs.2,000/=.

9 The person who is attending the patient in hospital has to go out of the hospital for purchasing the fruits, medicine and other required things, or has to go to the residence either of the victim or of the releatives for necesary requirements and for that purpose because of the distance he may hire rickshaw or any other vehicle. During the period of hospitalisation the person who attended the appellant must have spent towards conveyance and that can be assessed at Rs.1,500/-.

10 Because of the injuries the appellant sustained, he was required to take special food and not ordinarily taken and for that special diet he was also required to spend something. Looking to the then prevailing market rates the same can be assessed at Rs.1,500/=.

11 For about 11 months the appellant, the only working partner, could not attend his firm work as a result he was not in a position to render services to the

firm and earn for all those connected with the firm. The learned Chairman of the Tribunal has found and rightly so considering the evidence on record that the net profit of the firm per month was around about Rs.3,000/=. The appellant therefore had to sustain the loss of Rs.12,000/= for four months which he is entitled to under the head "loss of income".

12 At this stage, our attention is drawn to the evidence of Rajesh Chinubhai Exh.24 who was the Accountant in the appellant's firm. According to him, for 8-1/2 months the appellant could not attend the business. But his such say cannot be accepted because the doctor who has examined the appellant is silent on the point. On this point, doctor was the best witness to throw light on the proposition. When the appellant has taken no care to place necessary facts on record through the evidence of the doctor, the say of the Accountant cannot be accepted. Looking to the injuries and the time qua healing process ordinarily in such cases is consumed, Mr Kavina, the learned counsel for the respondent no.3, is right in submitting that within a period of 4 months the injured person can resume his work.

13 Dr N.R. Parikh is examined for assessing the disability. He assessed the disability at 18.5% because, according to him, disability of right heep thigh was 5% and knee and leg 14.5%. For the purpose of quantum if the disability is to the nearest round figure is taken into account, it would be 20% and considering the whole body, the same would come to half i.e. 10%. For the purpose of assessing the amount under the "permanent partial-disability-head", the income of the injured person has to be taken into account. The Tribunal assigning the reason vide para 23 assessed the income at Rs.700/= per month. The evidence of Rajesh Chinubhai, Exh.24, the Accountant of the firm, is also discussed. As per that evidence the profit of the previous year was Rs.33,609/=. In all there were four partners and therefore the share of the appellant in the net profit came to Rs.8402.25 ps. The same would come to Rs.700.18 ps. per month. The learned Chairman has therefore assessed the income of the appellant at Rs.700/- per month and accordingly making it to be the base, the amounts under the heads of permanent partial disability are assessed as economic loss. But the case on hand the base must be considered double than the income of the appellant is found, which can be fixed at Rs.1,500/because the other partners as stated above are virtually silent partners and the appellant would be finding it difficult for smooth moving from place to

place because of his business purpose. If making the base of Rs.1500/= per month, the disability is assessed at the rate of 10% as stated above, per year the amount thereof would come to Rs.1800/=. On the date of the accident the appellant was aged 32 years and he would have served the firm for about 33 years more considering the span of life to be 70 years. Hence, a 15 multiplier should be adopted. If that is done, the appellant is entitled to Rs.27,000/= under the head "permanent-partial-disability". Under no other head, he is entitled to any amount. In all therefore he is entitled to Rs.60,900/= but whole of the amounts cannot be awarded because he is also found negligent and responsible for the incident. As his negligence is assessed at 60%, he is entitled to 40% of the amount found awardable, which comes to Rs.24,360/=. In this case, the award is passed for Rs.10,600/=. The appellant is therefore entitled to Rs.14,360/= more as additional compensation than awarded.

14 What rate of interest should be awarded on the additional amount is the issue raised by the learned advocates representing the parties. The learned advocate for the appellant submits that the interest at the rate of 12% may be awarded while the learned advocate for the respondent no.3 submits that the rate of interest cannot be more than 6% because in those days rate of 6% was considered to be fair and reasonable.

15 In First Appeal No.462 of 1986 dated 08/03/2000 we have, regarding rate of interest, held that the Court has to award rate of interest which would be commensurating with the economic policy of the nation or the policy adopted by the Reserve Bank of India i.e. the rate at which interest is being paid by the Banks on fixed deposits. Likewise is also held by this Court in the case of MANOJ RAMBHAI GADHVI V. VAGASIA BALUBHAI KHODABHAI 2000(1) G.L.H. at page 440. The rate of interest in short must be commensurating with the economic policy of the nation. The ordinary rate of interest being awarded on the fixed deposits is 10.5% maximum. In this case therefore, the appellant can be awarded interest at the rate of 10% on the additional amount of compensation.

15 On no other point submissions are made.

16 For the aforesaid reasons, the appeal is required to be partly allowed and is allowed accordingly. The award of the Tribunal dated 08/03/1985 is modified. Instead of Rs.10,600 the respondents shall jointly and

severally pay Rs.24,360/= less already paid i.e. they shall pay additional amount of Rs.14,360/- over and above the amount of Rs.10,600/- already awared together with interest at the rate of 10% per annum from the date of the petition till realisation and shall also pay the costs in proportion.

(mohd) ***